



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 8 2009

Autumn Productions
P.O. Box 27972
Las Vegas, Nevada 89126

RE: MUR 6101
Autumn Productions

Dear Autumn Productions:

On October 28, 2008, the Federal Election Commission notified Autumn Productions of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded at that time.

Upon further review of the allegations contained in the complaint, the Commission, on April 21, 2009, found that there is reason to believe Autumn Productions violated 2 U.S.C. §§ 441a(a)(1) or 441b(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

10044274628

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Joshua Smith, the attorney assigned to this matter, at (202) 694-1624.

Sincerely,



Matthew S. Petersen
Vice Chairman

Enclosures
Factual and Legal Analysis
Designation of Counsel Form

10044274629

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Autumn Productions

MUR: 6101

I. INTRODUCTION

This matter arises out of a complaint alleging that Autumn Productions made prohibited corporate contributions to Heller for Congress and Elisabeth Ballinger, in her official capacity as treasurer ("the Committee"), by extending credit to the Committee that remained outstanding for a long period of time. Based on available information indicating that the Committee owed in excess of \$130,000 to Autumn Productions for over two years, and because it is unclear whether Autumn Productions is incorporated, the Commission finds reason to believe that Autumn Productions made excessive or prohibited corporate contributions in violation of 2 U.S.C. §§ 441a(a)(1) or 441b(a).

II. FACTUAL BACKGROUND

The complaint in this matter raises questions about the Committee's debts owed to vendor Autumn Productions.¹ The complainant asserts that Autumn Productions provided goods or services to the Committee, and that the Committee failed to repay this entity. Complainant argues that Autumn Productions extended credit to the Committee outside the normal course of business because the Committee has "regularly and promptly paid for [other] services rendered" during both the 2006 and 2008 campaign cycles, and because it is not the "usual or normal practice" for political consulting companies to allow debts to go unpaid for two years. Complaint at 2. The Complainant states that the credit extended to the Committee is not substantially similar to the credit extended to nonpolitical clients, because regional consulting

¹ The Committee is the principal campaign committee for Dean Heller, who was elected to the U.S. House of Representatives for Nevada's Second Congressional District in 2006 and was reelected in 2008.

10044274630

1 firms do not "lend sums in excess of \$250,000 interest free for periods of over a year to non-
2 political clients." *Id.* Autumn Productions did not submit a response to the complaint.

3 **III. LEGAL ANALYSIS**

4 The issue presented in this case is whether Autumn Productions made an excessive or
5 prohibited contribution in the form of an extension of credit to the Committee that has remained
6 outstanding for more than two years. The Federal Election Act of 1971, as amended ("the Act"),
7 prohibits contributions to a candidate or an authorized committee in excess of \$2,300 in
8 connection with Federal elections, and it prohibits corporations (including commercial vendors)
9 from making contributions or expenditures in connection with any election for Federal office.
10 See 2 U.S.C. §§ 441a(a)(1) and 441b(a); 11 C.F.R. § 114.2. Similarly, the Act prohibits
11 committees from knowingly accepting excessive or prohibited contributions. See 2 U.S.C.
12 §§ 441a(a)(1) and 441(b). A "contribution" is defined as "any gift, subscription, loan, advance,
13 or deposit of money or anything of value made by any person for the purpose of influencing any
14 election." 2 U.S.C. § 431(8)(A)(i). A "commercial vendor" is any person who provides goods or
15 services to a candidate or political committee, and whose usual and normal business involves the
16 sale, rental, lease, or provision of those goods or services. See 11 C.F.R. § 116.1(c).

17 The extension of credit to a candidate's authorized political committee by a commercial
18 vendor is considered a contribution unless the credit is extended in the ordinary course of the
19 person's business, and the terms are substantially similar to extensions of credit to nonpolitical
20 debtors of similar risk and size of obligation. See 11 C.F.R. § 100.55; 11 C.F.R. § 116.3(b). An
21 extension of credit includes, but is not limited to: (1) any agreement between the creditor and
22 political committee that full payment is not due until after the creditor provides goods or services
23 to the political committee; (2) any agreement between the creditor and political committee that

1 the political committee will have additional time to pay the creditor beyond the previously
2 agreed-to due date; and (3) the failure of the political committee to make full payment to the
3 creditor by a previously agreed-to due date. *See* 11 C.F.R. § 116.1(c). In assessing whether a
4 commercial vendor extended credit in the ordinary course of business, and thus did not make a
5 contribution, the Commission will consider: (1) whether the commercial vendor followed its
6 established procedures and its past practice in approving the extension of credit; (2) whether the
7 commercial vendor received prompt payment in full if it previously extended credit to the same
8 candidate or political committee; and (3) whether the extension of credit conformed to the usual
9 and normal practice in the commercial vendor's trade. *See* 11 C.F.R. § 116.3(c). A contribution
10 also will result if a creditor fails to make a commercially reasonable attempt to collect the debt.
11 *See* 11 C.F.R. § 100.55.

12 As a company that "offers photography and graphic design services, with video for
13 international and domestic network and cable TV systems," Autumn Productions appears to be a
14 commercial vendor under the Commission's regulations.² 11 C.F.R. § 116.1(c). The Committee
15 lists its debt to Autumn Productions as consulting and management services. *See* Schedule D,
16 2008 Post-General Report. Because the company is not currently registered as a corporation or
17 other business entity in Nevada, it is unclear at this time whether Autumn Productions would be
18 treated as a partnership or corporation for purposes of the Act. If treated as a partnership, it is
19 possible that Autumn Productions made an excessive contribution to the Committee in violation
20 of 2 U.S.C. § 441a(a)(1). However, as a corporation, Autumn Productions would have made a
21 prohibited contribution in violation of 2 U.S.C. § 441b(a).

² *See* Desert Beacon, <http://desertbeacon.blogspot.com/2008/05/rep-bellers-intriguing-campaign-debts.html> (May 07, 2008, 23:06 EST).

1 It appears that Autumn Productions extended credit to the Committee because it did not
2 require full payment until after it rendered services to the Committee. *See* 11 C.F.R.
3 § 116.1(e)(1). The Committee has been in debt to Autumn Productions from mid-2006 until the
4 present, with an average balance of \$131,823. The Committee initially listed debt to Autumn
5 Productions in the amount of \$66,000 in its 2006 October Quarterly Report. The Committee's
6 debt then increased to \$76,000 the next reporting period, and to \$146,000 the following reporting
7 period. This amount remained outstanding at least 390 days, until the Committee paid down the
8 debt to \$137,050 sometime between January 1, 2008 and March 31, 2008. The Committee's
9 debt to Autumn Productions has remained at \$137,050.

10 Based on the available information, Autumn Productions did not extend credit to the
11 Committee in the ordinary course of business and on substantially similar terms as those of
12 nonpolitical clients of similar risk and size of obligation. *See* 11 C.F.R. § 100.55; 11 C.F.R.
13 § 116.3(b). Autumn Productions did not respond to the complaint or provide information
14 demonstrating that it followed its established procedures and past practice, that it previously
15 extended credit to the Committee and received prompt payment in full, or that the extension of
16 credit conformed to the usual and normal practice in its trade or industry. *See* 11 C.F.R.
17 § 116.3(c). As a result, we have no information regarding its collection policies and practices,
18 advance payment policies, or billing cycles for nonpolitical debtors, and we lack information
19 regarding the terms of the transaction in this case. However, we question whether a small,
20 apparently unregistered vendor could extend credit in excess of \$100,000 for more than two
21 years in the ordinary course of business.

22 Similarly, Autumn Productions provided no information demonstrating that it has acted
23 in a commercially reasonable manner in attempting to collect the debt owed by the Committee.

MUR 6101
Factual and Legal Analysis
Autumn Productions

- 1 The Committee has still not paid Autumn Productions in full, and this debt owed by the
- 2 Committee has been continuously outstanding for at least two years. Thus, the Commission
- 3 finds reason to believe that Autumn Productions made an excessive or prohibited corporate
- 4 contribution, in violation of 2 U.S.C. §§ 441a(a)(1) or 441b(a).

10044274634